

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11718 of 2013

(Arising out of OIA-SRP-557-VDR-I-2013 dated 13/03/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

Siddharth Industries

.....Appellant

C-303, Siddhi Vinayak Complex,
Faramji Compound, Opp. Alkapuri Rly. Station, Alkapuri,
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i

.....Respondent

1ST FLOOR...CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE,
VADODARA, GUJARAT-390007

APPEARANCE:

Shri Dhaval Shah & Shri M.G.Yagnik, Advocates for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 10941 /2023

DATE OF HEARING: 02.03.2023
DATE OF DECISION: 20.04.2023

RAMESH NAIR

This appeal is directed against Order-In-Appeal passed by the learned Commissioner (Appeals) whereby, the Order-In-Original was upheld and appeal was rejected. The issue involved is that whether the laying of underground cable providing three phase earthing box and providing connected accessories falls under the service category of Erection, installation and Commissioning service and whether the appellant is eligible for concessional exemption in terms of notification no. 1/2006-ST dated 01.03.2006. The revenue's case is that since the appellant have not provided the plant, machinery, equipment during the course of erection, installation of underground cable, they are not eligible for exemption under notification no. 1/2006-ST dated 01.03.2006.

02. Shri Dhaval Shah along with Shri M.J.Yagnik, learned counsels appearing on behalf of the appellant at the outset submits that the mere laying down underground cable from one transformer station to the another

transformer station does not fall under service of Erection, installation and commissioning hence, the same is not taxable irrespective of whether the exemption is available or not, no demand is sustainable. He placed reliance on the following judgments:-

- COMMISSIONER OF C.EX., & S.T. JAIPUR-II Vs. RISHABH TELELINKS- 2017 (49) S.T.R. 71 (Tri.-Del.)
- ROYAL ELECTRICALS- 2018 (9) G.S.T.L. 205 (Tri.-Mumbai)
- M/s. BABA CONSTRUCTION V/s. CCEX., & S.T., RANCHI- 2019 (4) TMI 1269-CESTAT KOLKATA
- SUNGRACE CONSTRUCTION- 2017 (52) S.T.R. 33 (Tri.-Del.)

03. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the activity which is under dispute is the laying of underground cable, providing three phase earthing box and providing connecting accessories, whether the same is classifiable as erection, installation and commissioning service. In this regard, this tribunal considering the identical facts held in ROYAL ELECTRICALS (supra) that laying of cable, shifting of cable for the purpose of widening, renovation of roads, etc is not taxable. The relevant order of the tribunal is reproduced below:-

5.*As regard the claim of the appellant that certain services like laying of cable shifting of cable for the purpose of widening of road etc. a Service Tax demand of Rs. 8,919/- is not sustainable. We agree that such service is not taxable as per the Board Circular No. 123/05/2010, dated 24-5-2010 which is extract below :*

The taxable status of various activities, on 3. which disputes have arisen. Based on the foregoing, the following would be the tax status of some of the activities in respect of which disputes have arisen, -

S. No.	Activity	Status
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994
2.	Laying of cables under or alongside roads	Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994

3.	<i>Laying of electric cables between grids/sub-stations/transformer stations en route</i>	<i>Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994</i>
4.	<i>Installation of transformer/ sub-stations undertaken independently</i>	<i>Taxable service, namely Erection, commissioning or installation services [Section 65(105)(zzd)].</i>
5.	<i>Laying of electric cables up to distribution point of residential or commercial localities/ complexes</i>	<i>Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994</i>
6.	<i>Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.</i>	<i>Taxable service, namely 'commercial or industrial construction' or 'construction of complex' service [Section 65(105)(zzq)/(zzzh)], as the case may be.</i>
7.	<i>Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them</i>	<i>Taxable service, namely Erection, commissioning or installation services [Section 65(105)(zzd)].</i>
8.	<i>Railway electrification, electrification along the railway track</i>	<i>Not a taxable service under any clause of sub-section (105) of Section 65 of the Finance Act, 1994</i>

The conclusions drawn above are essentially 4. general in nature and would have to be applied in an individual case depending upon its facts and circumstances. The pending disputes/cases may be decided based on the clarifications contained in this circular.

From the above Board Circular the service of shifting of overhead cables/wires and laying of cables under or alongside roads and laying of electric cables between the gride/sub-stations/transformers station are not taxable. In view of the above Board Circular we set aside the demand of Rs. 8,919/- and corresponding interest and penalty. As per above discussion, we modify the impugned order, the demand of Rs. 8,919/- and corresponding penalty and interest, is dropped and remaining demand of service tax and corresponding interest and penalties are upheld. The appeal is disposed of in above terms.

This identical service of laying of cable was also considered by this tribunal in RISHABH TELELINKS (supra) wherein, the tribunal relying on the CBEC Circular No. 123/05/2010- ST dated 24.05.2010 held that the laying of cable is not liable to service tax, in the said case the revenue's appeal was dismissed.

4.1 The division bench of this tribunal at Calcutta Bench considering the same issue once again relying on the board circular dated 24.05.2010 (supra) held that laying of optical fibre cable under or along side road is not taxable.

05. Considering the consistent view taken by this tribunal in various judgments, we are of the view that the activity of the appellant that is predominantly laying of underground cable is not eligible to service tax accordingly, the demand is not sustainable hence the same is set aside. Appeal is allowed.

(Pronounced in the open court on 20.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

Mehul